

AG Contract No.: KR04-0372TRN  
ADOT ECS File: JPA 04-010  
Project No.: HRF-MRN-0-798  
Project: Tangerine Road  
Section: Breakers to Thornydale  
TRACS No.: HF098 01C  
Budget Source Item No.: N/A  
HURF Exchange Program

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE TOWN OF MARANA

THIS AGREEMENT is entered into 12th August, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and THE TOWN OF MARANA acting by and through its MAYOR and TOWN COUNCIL (the "Town").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes Section 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The State has approved the exchange of \$1,260,900.00 Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the Town for roadway resurface and intersection improvement from Breakers to Thornydale on Tangerine Road, and such funds will be repaid to the State by withholding from Pima Association of Governments (PAG) federal funds and the obligation authority for federal funds in the amount of \$1,306,901.00 in Fiscal Year 2004.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 27007  
Filed with the Secretary of State  
Date Filed: 08/12/04  
Janice K. Brewer  
Secretary of State  
By: Timothy D. Harnswald

## **II. SCOPE OF WORK**

### **1. The Town will:**

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project construction cost, at the start of construction.

d. Invoice the State for thirty percent of the project construction cost, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project construction cost at the one hundred percent project construction completion stage, after the City, PAG, and the State (ADOT) representatives have completed final project review.

### **2. The State will:**

a. Within 30 days after receipt and approval of an invoice, pay for thirty percent of the project construction cost at the start of construction, and for thirty percent of the project construction cost at the thirty percent project construction completion stage, and for thirty percent of the project construction cost at the sixty percent project construction completion stage, and pay ten percent upon completion of construction.

## **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The Town, in regard to the Town's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law, the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the Town, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ. 85007  
FAX (602) 712-7424

Town of Marana  
Department of Public Works  
ATTN: Assistant Director of Public Works  
3696 W. Orange Grove Road  
Tucson, Arizona 85741

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10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

**TOWN OF MARANA****STATE OF ARIZONA**

Department of Transportation

By *Bobby Sutton, Jr.*  
BOBBY SUTTON, JR.  
Mayor

By *Dale Buskirk*  
DALE BUSKIRK, Division Director  
Transportation Planning Division

Date *7/20/04*

Date *2 Aug 2004*

## ATTEST

By *Jocelyn Bronson*  
JOCELYN BRONSON  
Town Clerk  
Date *7/20/04*



CERTIFIED

Original ☒ Copy ☐  
Adopted by Council July 20, 2004  
Ordinance # 2004-101 Resolution # 2004-101  
Town Clerk Jocelyn Bronson Date 07-23-04

## MARANA RESOLUTION NO. 2004-101

RELATING TO ROAD IMPROVEMENTS; APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF MARANA AND ARIZONA DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENT TO TANGERINE ROAD FROM THE BREAKERS TO THORNYDALE ROAD

WHEREAS, Congress has authorized appropriations for but not limited to the construction of streets; primary feeder and farm market roads; the placement of bridges; the elimination of roadside obstacles; the application of pavement markers and the construction of transportation related facilities; and

WHEREAS, the Town of Marana, Pima County, Arizona, recognizes its duty to protect the health, safety and welfare of its citizens and the general motoring public within its corporate limits; and

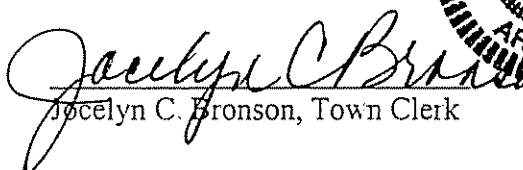
WHEREAS, this project is identified as a Town of Marana project exclusively identified in the Transportation Improvement Plan (TIP), Project No. 2.00; and

WHEREAS, the Town has elected to exercise its option under the Highway User Revenue Fund (HURF) Exchange Program and has complied with the requirements of Section 600 of Arizona Department of Transportation's Local Government Manual.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, that the intergovernmental between the Town of Marana, Pima County and the State of Arizona Department of Transportation, attached to and incorporated by this reference in this resolution as Exhibit "A" is hereby approved. The Mayor is hereby authorized to execute said Exhibit "A" and the Town Clerk is hereby authorized to attest thereto for and on behalf of the Town of Marana.

PASSED, ADOPTED, and APPROVED by the Mayor and Council of the Town of Marana, Arizona, this 20th day of July, 2004.

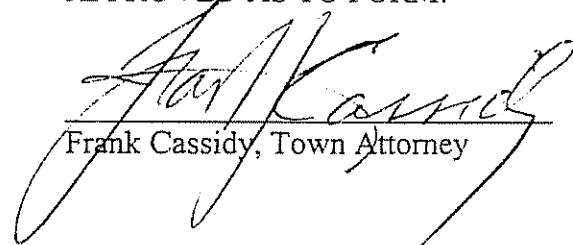
ATTEST:

  
Jocelyn C. Bronson, Town Clerk



  
Mayor Bobby Sutton, Jr.

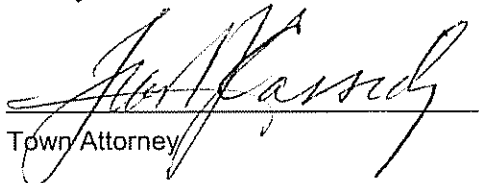
APPROVED AS TO FORM:

  
Frank Cassidy, Town Attorney

APPROVAL OF THE TOWN OF MARANA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the TOWN OF MARANA, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 13<sup>th</sup> day of July, 2004

  
Town Attorney



TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE: 602.542.8855

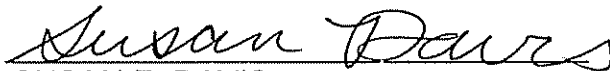
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-0372TRN (**JPA 04-010**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: August 5, 2004

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section